

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR
MANAGED SERVICES FOR INFORMATION TECHNOLOGY

DELL MARKETING, L.P.

1. Introduction

A. Parties

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Dell Marketing, L. P. (hereinafter “Vendor”), with its principal place of business at One Dell Way, Box RR8-06, Round Rock, Texas 78682.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Texas Building and Procurement Commission’s Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-091, on December 8, 2006, for Managed Services for Information Technology. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-091 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Services and Pricing Addendum; Appendix D, Sample Supplemental Agreement; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-091, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-091, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be three (3) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms.

3. Service Offerings

Services available under this Contract are limited to those Services described in Appendix C, Services and Pricing Index. Per Seat Pricing listed in Appendix C, Services and Pricing Index, is based upon current Standard Configurations for computers promulgated by DIR. Vendor may price alternate configurations and Customers may order alternate configurations based upon their business needs, however, basic-level services for Asset Tracking, Break/Fix of Vendor owned Equipment and Unwind will be included in the per seat price.

4. Pricing**A. Customer Price**

- 1) Pricing for services available under this Contract is detailed in Appendix C, Services and Pricing Index. Pricing included in Appendix C, Services and Pricing Index includes the DIR Administrative Fee. Pricing in Appendix C is not-to-exceed pricing.
- 2) Customers purchasing services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.
- 3) The pricing supporting this Contract may be subject to additional discounts as negotiated between the Customer and the Vendor. Customer may participate in special promotional offerings that may be made available by the Vendor to governmental and/or educational customers under predefined qualifications. In such event, a copy of such better offerings shall be furnished to DIR upon request. Promotions offered to Vendor's federal, business, consumer or other non-governmental customers are not applicable to this Contract and are not available to DIR or Customers. In addition, Customers may choose between the lower of a Vendor special promotional offering or the DIR discounted price but may not be eligible to combine or "stack" the two.

B. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

D. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense

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reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

E. Changes to Prices

General price decreases that are mutually agreed between DIR and Vendor shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately at the time of submission of a purchase order, but shall not be retroactive to services currently being rendered under a prior purchase order. This provision does not apply to special pricing or promotional opportunities, or to minor pricing fluctuations.

5. DIR Administrative Fee

A. The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (0.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Service Delivery Division
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Lorri Bailey
Dell Marketing, L.P.
One Dell Way, MS RR8-07
Round Rock, Texas 78682
Phone: (512) 723-0016
Facsimile: (512) 283-9092
Email: lorri_bailey@dell.com

7. Sample Supplemental Agreement

Services provided under this Contract shall be based upon the Sample Supplemental Agreement as set forth in Appendix D of this Contract. Customers may negotiate the

terms and conditions of a Supplemental Agreement to suit their business needs so long as the Supplemental Agreement terms and conditions do not conflict with this Contract.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.

- A. Appendix A, Section 4, Contract Fulfillment and Promotion, Section B., Internet Access to Contract and Pricing Information, 5) is hereby restated in its entirety as follows:

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties other than Subcontractors, as necessary or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, so long as DIR publicly posts the document. However, Vendor may agree with an individual Customer to implement security measures such as password protected online ordering under the DIR Contract.

- B. Appendix A, Section 4, Contract Fulfillment and Promotion, Section E., Trade Show Participation is restated in its entirety as follows:

At DIR's discretion, Vendor may be required to participate in no more than two (2) DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation.

- C. Appendix A, Section 4, Contract Fulfillment and Promotion, Section G., DIR Cost Avoidance, is restated in its entirety as follows:

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance (savings) the State has achieved through the Contract. During the fourth (4th) quarter of calendar year 2007, Vendor will work with DIR to establish methods for calculating Cost Avoidance for procurements made through the Contract.

- D. Appendix A, Section 5, Purchase Orders, Invoices and Payments, Subsection A., Purchase Orders, is hereby restated in its entirety as follows:

All Customer Purchase Orders will be placed directly with the Vendor. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor. Customers shall have the ability to order products through electronic or paper submission of a purchase order.

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- E. Appendix A, Section 6, Contract Administration, Subsection A., Contract Administrators, 2) Vendor Contract Administrator, is hereby restated in its entirety as follows:

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between Vendor and a Customer, and iii) advising DIR of Vendor's performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State. In such instance, Vendor requests twenty (20) calendar days notice.

- F. Appendix A, Section 6, Contract Administration, Subsection B., Reporting and Administrative Fees, 1) Reporting Responsibility, b) is hereby restated in its entirety as follows:

DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's purchase orders and invoices at DIR's expense. Upon receipt of ten (10) days notice, Vendor shall grant DIR, during normal business hours, necessary access to Customer purchase orders and invoices generated under and pertaining to this Agreement.

- G. Appendix A, Section 6, Contract Administration, Subsection B., Reporting and Administrative Fees, 4) DIR Administrative Fee, a) is hereby restated in its entirety as follows:

An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The administrative fee is specified in Section 5 of the Contract. Payment of the administrative fee shall be due thirty calendar days after the close of the previous month period.

- H. Appendix A, Section 7, Vendor Responsibilities, Subsection A. Indemnification, 1) Acts or Omissions, is hereby restated in its entirety as follows:

Vendor shall defend, indemnify and hold harmless the State of Texas and Customers, their officers, agents, and employees from and against all third party claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorney's fees, for personal injury or damage to physical property arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as requested by DIR. To the extent permitted by state law, Customers agree to be responsible for their own acts, error or omissions pertaining to this provision. Vendor's total liability shall be

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limited to the fees paid to Vendor under the specific order giving rise to the claim, suit, action, or liability.

- I. Appendix A, Section 7, Vendor Responsibilities, Subsection A. Indemnification, 2) Infringements, a) is hereby restated in its entirety as follows:

Vendor shall defend, indemnify and hold harmless the State of Texas and Customers, their officers, agents and employees, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual property or intangible property rights in connection with the use of any Vendor branded product or service supplied under the Contract. Vendor agrees to defend against any and all third party claims with respect to Vendor branded products or service at Vendor's expense, whether or not such claims become the subject of litigation provided the Customer: (i) notifies Vendor promptly in writing of such claim, (ii) grants Vendor control over the defense and settlement thereof, and (iii) reasonably cooperates in response to Vendor's requests for assistance. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

- J. Appendix A, Section 7, Vendor Responsibilities, B. Vendor Certifications, is hereby restated in its entirety as:

Vendor certifies that it: (i) has not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract, (ii) is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate, (iii) it, or anyone acting for it, has not violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, (iv) has not received payment from DIR or any of its employees for participating in the preparation of the Contract, (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate, (vi) to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract, (vii) are not suspended or debarred from doing business with the federal government as listed in the Excluded Parties List System (EPLS) maintained by the General Services Administration, and (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support

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Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

- K. Appendix A, Section 7, Vendor Responsibilities, Subsection H. Security of Premises, Equipment, Data and Personnel, is hereby restated in its entirety as follows:

Vendor may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and/or materials (collectively referred to as “Data”) belonging to the Customer. Vendor shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. Customer shall be solely responsible for backing up data on a routine basis as mutually agreed to by Vendor and Customer.

- L. Appendix A, Section 7, Vendor Responsibilities, Subsection J., Limitation of Liabilities, is hereby restated in its entirety as follows:

Except as specifically set forth in this Contract, Vendor and DIR each expressly agree and understand that the other party will not have any liability for products not being available for use, or for lost or corrupted data or software. For any claim or cause of action arising under or related to the Contract: i) none of the parties shall be liable to the other for incidental, indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor’s liability for damages of any kind to the Customer shall be limited to the lesser of one million dollars (\$1,000,000) or the U.S. Dollar equivalent of the total dollar value of products and services purchased from Vendor by such Customer under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. In the event the law of any jurisdiction which applies to this Contract prohibits in any part any limitation in this paragraph, the parties agree that such limitation shall be modified, without further action of either party, so as to broadly apply to the maximum effect allowed by governing laws.

- M. Appendix A, Section 7, Vendor Responsibilities, Subsection L., Overcharges, is hereby restated in its entirety as follows:

In the event that Vendor initiates litigation for a purported antitrust violation for alleged overcharges, and as a result of such litigation, whether by final judgment or settlement of its claims, Vendor receives monetary compensation, Vendor hereby agrees to pass on to DIR and/or its Customers a portion of such compensation if, and only if, the following conditions occur: (a) the compensation received by Vendor in settlement or judgment is directly attributable to software, hardware, goods and/or services included within the computer products or other goods and/or services sold by

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Vendor to DIR or its Customers under this Contract; (b) it is was determined in the antitrust litigation (whether by judicial finding or stipulation) that the overcharge in software, hardware, goods and/or services suffered by Vendor was, in fact, passed on to DIR or its Customers in the computer products or other goods and/or services purchased by DIR or its Customers under this Contract during the time period referenced in the litigation; and (c) in calculating the amount of compensation which Vendor agrees to pass on to DIR or its Customers, Vendor may deduct its actual costs of suit, including attorney's fees, incurred in achieving the settlement or judgment.

Vendor has the sole discretion to decide whether or not to pursue any antitrust claim and whether to settle any such claim. Vendor shall have no obligation whatsoever to pursue a purported antitrust violation, notwithstanding any request by DIR to do so.

- N. Appendix A, Section 8, Contract Enforcement, Subsection C. Force Majeure, is hereby restated in its entirety as follows:

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, court order, or other Force Majeure event, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

This Contract is executed to be effective as of the date of last signature.

Dell Marketing, L. P.

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: *signature on file*

Authorized By: *signature on file*

Name: Allison Akers

Name: Cindy Reed

Title: Contracts Consultant

Title: Interim Director of Service Delivery

Date: 6/14/07

Date: 6/18/07

Legal: signature on file 6/14/07